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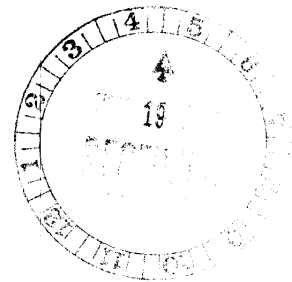
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November 19, 2004

BY HAND DELIVERY

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board – Case Control Unit  
1925 K Street, N.W.  
Washington, D.C. 20432

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Re: Docket No. 42072, Carolina Power & Light  
Company v. Norfolk Southern Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten copies of the Response of Complainant Carolina Power & Light Company to the Board's October 20, 2004 Order.

Kindly acknowledge receipt and filing of these materials by date-stamping the extra copy of this letter and returning it to our messenger.

Sincerely,

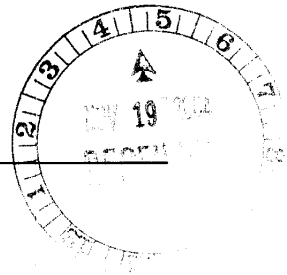
*C. Michael Loftus*  
C. Michael Loftus

Enclosures

cc: G. Paul Moates, Esq.

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



CAROLINA POWER & LIGHT  
COMPANY,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY  
COMPANY,

Defendant.

212582  
Docket No. 42072

ENTERED  
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**RESPONSE OF COMPLAINANT CAROLINA POWER &  
LIGHT COMPANY TO THE BOARD'S OCTOBER 20, 2004 ORDER**

CAROLINA POWER & LIGHT COMPANY

By: David T. Conley  
Carolina Power & Light Company  
410 South Wilmington Street  
Raleigh, NC 27601

C. Michael Loftus  
Christopher A. Mills  
Frank J. Pergolizzi  
Peter A. Pfohl  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
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OF COUNSEL:

Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

Dated: November 19, 2004

Attorneys for Complainant

CAROLINA POWER & LIGHT COMPANY,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 42072
	)	
NORFOLK SOUTHERN RAILWAY COMPANY,	)	
	)	
	)	
Defendant.	)	
	)	

As directed by the Surface Transportation Board (“STB” or “Board”), Complainant Carolina Power & Light Company (“CP&L”) hereby responds to the order that the Board served in the above-captioned proceeding on October 20, 2004 (the “October 20 Decision”).

-2-


Counsel for CP&L has conferred with counsel for Norfolk Southern Railway Company (“Norfolk Southern”) in an effort to work out an agreement regarding the procedure and schedule for the phasing case. Counsel for both parties reached essential agreement in regard to the timeline but were unable to agree regarding a procedure for the submission of evidence. CP&L believes that as the party with the burden of proof in this proceeding, it should have the right to open and close the evidentiary record. See e.g., Bituminous Coal – Hiawatha, Utah to Moapa, Nevada Aggregate Volume Rate on Coal – Acco, Utah to Moapa, Nevada, 1987 WL 98994 at \*1 (slip opinion); Finance Docket No. 34424, Canadian Nat’l Rwy. Co. and Grand Trunk Corp. – Control – Duluth, Missabe and Iron Range Rwy. Co. and the Pittsburgh & Conneaut Dock Co., STB Served April 9, 2004, at 13. The procedure followed in the earlier phase of this case followed this pattern, as has the procedure followed in other coal rate cases. CP&L therefore requests the Board to adopt the procedure proposed by CP&L, which involves an Opening Statement of Fact and Argument presented by the complainant, a Reply Statement of Fact and Argument presented by respondent, a Rebuttal Statement of Fact and Argument presented by complainant, and Briefs presented by both parties. The schedule and procedure are presented in Exhibit 1. CP&L understands that Norfolk Southern will be filing a reply to this Response advising the Board of its proposed procedure.

Accordingly, CP&L confirms that it wishes to submit evidence and argument on the need for relief under the phasing constraint in this proceeding in light of the October 20 Decision, and requests that the Board establish the procedure and schedule set forth in Exhibit 1.

Respectfully submitted,

CAROLINA POWER & LIGHT COMPANY

By: David T. Conley  
Carolina Power & Light Company  
410 South Wilmington Street  
Raleigh, NC 27601

C. Michael Loftus   
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Washington, D.C. 20036

Dated: November 19, 2004

Attorneys for Complainant

### Exhibit 1

D <sup>1</sup> + 25	Discovery served.
D + 55	Responses and objections to discovery requests due.
D + 60	STB Discovery Conference. <sup>2</sup>
D + 90	Completion of Production.
D + 120	CP&L submits Opening Statement of Fact and Argument.
D + 150	Norfolk Southern submits Reply Statement of Fact and Argument.
D + 180	CP&L submits Rebuttal Statement of Fact and Argument.
D + 210	Parties file Briefs.

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<sup>1</sup> “D” represents the service date of the decision in which the Board adopts a procedural schedule for this case. The Parties will confer after the STB issues the decision establishing “D” and will agree on dates certain for all events, avoiding weekends and holidays.

<sup>2</sup> If significant discovery issues are not resolved, a delay in the proposed schedule may be necessary to accommodate motions to compel and additional discovery conferences. The parties have agreed, however, to try to avoid such conflicts.

**Certificate of Service**

I hereby certify that this 19th day of November, 2004, I have caused copies of the foregoing Response to be served by hand on counsel for Defendant Norfolk Southern Railway Company Inc. as follows:

R. Eden Martin, Esq.  
G. Paul Moates, Esq.  
Terence M. Hynes, Esq.  
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